

Blue Cross of Kansas City, Inc. and Blue Shield of Kansas City, Inc. and Warehouse, Mail Order, Ice, Cold Storage, Soft Drink, Waste Paper, Distribution Workers, Egg Canners, Miscellaneous Drivers and Helpers Local Union No. 838, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Petitioner. Case 17-RC-9071

December 3, 1981

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered the objections to an election held July 24, 1980,¹ and the Acting Regional Director's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and brief, and hereby adopts the Acting Regional Director's findings and recommendations.²

CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid ballots have not been cast for Warehouse, Mail Order, Ice, Cold Storage, Soft Drink, Waste Paper,

¹ In the absence of exceptions thereto, we adopt *pro forma* the Acting Regional Director's recommendations that Petitioner's Objections 1(b) and 1(c) be overruled.

² We have attached as an appendix that portion of the Acting Regional Director's report dealing with Petitioner's Objection 2(b), which alleges, *inter alia*, threats by the Employer of a loss of benefits. [Omitted from publication.] In adopting the Acting Regional Director's recommendation that this objection be overruled, we do not rely on *Ludwig Motor Corp.*, 222 NLRB 635 (1976). We also note that speech found to be protected by Sec. 8(c) from challenge as an unfair labor practice may nevertheless be found objectionable under the more restrictive standard for speech applicable in a representation election proceeding. *Dal-Tex Optical Company, Inc.*, 137 NLRB 1782, 1786-87 (1962). Accordingly, we rely upon *C & K Coal Company*, 195 NLRB 1038 (1972), and *Host International, Inc.*, 195 NLRB 348 (1972), in which bargaining-from-scratch statements similar to those made by the Employer here were found to be unobjectionable.

Because we find the Employer's statements individually unobjectionable, we do not agree with our colleague that nonetheless cumulatively they are objectionable by virtue of their repetition. We note that in *Host International, Inc.*, *supra*, the similar statements were made at two separate meetings, and in *C & K Coal Company*, *supra*, the similar statements were made at several points throughout an employee meeting. Neither do we find significant, as does our colleague, the fact that the Employer stated that it had the obligation to bargain in good faith, rather than expressly stating that it intended to bargain in good faith. *C & K Coal Company*, *supra*.

Distribution Workers, Egg Canners, Miscellaneous Drivers and Helpers Local Union No. 838, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and that said labor organization is not the exclusive representative of all the employees, in the unit herein involved, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

MEMBER JENKINS, dissenting:

My colleagues find nothing objectionable in the Employer's repeated warnings to employees about the possible harmful consequences of the Union's representing them in collective bargaining. Thus, they find the Employer's bargaining-from-scratch statements similar to statements found to be unobjectionable in two cases on which they rely in overruling the objection.³ In my judgment, President Chernicky's statements in *C & K Coal Company* and General Manager Lew's statements in *Host International, Inc.*, do not rise to the level of the pattern of repeated references to loss of benefits present here, not only in President Willkie's statements but also in a leaflet circulated by the Employer on three different occasions.

In addition, I note that Willkie and the leaflets discussed the Employer's obligation to bargain in good faith and my colleagues adopt the Acting Regional Director's finding that Willkie expressed no intention of doing otherwise. However, it does not appear from the leaflets or Willkie's statements reported by the Acting Regional Director that the Employer assured the employees that it would bargain in good faith at the time it was making the statements in dispute here. But the Board has considered the presence of such assurances as a factor in evaluating the context surrounding such statements.⁴

In sum, I do not find that the Employer's statements here were limited to pointing out that bargaining does not automatically or necessarily lead to increases in benefits. Rather, in the entire context they represented a not very veiled warning to the employees to reject the Union or face the loss of existing benefits. Such objectionable conduct requires that the election be set aside and a new election be conducted.

³ *C & K Coal Company*, 195 NLRB 1038 (1972); *Host International, Inc.*, 195 NLRB 348 (1972).

⁴ See, for example, *Ludwig Motor Corp.*, 222 NLRB 635 (1976).